

REMARKS

This is in response to the Office Action dated April 28, 2009, and the Advisory Action dated August 11, 2009 in the above-referenced application. Applicants thank the Examiner for the helpful discussion of August 18, 2009 concerning this application. This Supplemental Amendment and Reply Under 37 CFR § 1.116 is being timely filed as a petition for a one-month extension of time with the required fee is being submitted herewith. Applicants respectfully request entry of the above amendment and reconsideration by the Examiner of all pending claims in view of the following.

Applicants hereby request non-entry of the previously filed unentered amendment and request that the amendment above be entered.

After entry of this amendment, claims 1, 2, 7-9 and 26 are pending. Claims 3-5 and 27 are cancelled without prejudice or disclaimer. The subject matter of claim 5 has been incorporated into claim 1. Claims 1 and 26 have been amended without prejudice or disclaimer and finds support *inter alia* in original claims 1 and 5. The amendments further narrow the scope of the independent claim and thus, do not present any new issues that require further consideration or search. No new matter has been added.

The above claim amendment and following remarks address the rejections in the Final Office Action dated April 28, 2009 and also the comments in the Advisory Action mailed August 11, 2009. Applicants respectfully request entry of the above claim amendment as it is believed to put the claims in condition for allowance or, alternatively, in better form for consideration on appeal. Thus, entry under 37 CFR §1.116 is correct.

Claim Objection

Claim 5 is objected to for depending on a rejected claim. Claim 5 has been cancelled without prejudice or disclaimer and the subject matter of claim 5 has been incorporated into claim 1. In light of the present amendment, the objection is believed to be rendered moot. Reconsideration and withdrawal of the objection is respectfully requested.

Claim Rejections – 35 U.S.C. § 112

Written Description

Claim 27 is rejected for allegedly failing to comply with the written description requirement. Applicants respectfully disagree. However, in order to expedite prosecution, claim 27 has been cancelled without prejudice or disclaimer. It is believed that the claim amendment renders the present rejection moot. Reconsideration and withdrawal of the rejection is respectfully requested.

Enablement

Claims 1-5, 7-9 and 26 are rejected for allegedly lacking an enabling disclosure. It is noted that, although claim 5 is included in this rejection as stated at page 3 of the Office Action, the Examiner nonetheless indicates that claim 5 is only objected to and is not rejected as stated on the Office Action Summary sheet as well as at page 2 of the Office Action. Accordingly, Applicants believe that claim 5 is otherwise allowable but for depending on a rejected claim and the present rejection is made to claims 1-4, 7-9, and 26 only. Applicants respectfully disagree that the claims are not enabled. However, to expedite prosecution, the claims have been amended without prejudice or disclaimer to incorporate the subject matter of the otherwise allowable claim, i.e. claim 5, into claim 1. Accordingly, it is believed that the rejection is rendered moot.

Moreover, Applicants note that the present amendment further narrows the scope encompassed by formula I recited in claim 1. As discussed in the previous responses, the specification provides sufficient guidance, including working examples, for one skilled in the art to generate expression constructs, to produce transgenic plants, and to express the construct resulting in the production of the desired polyunsaturated fatty acids in plants. As there has never been a requirement that every species encompassed by a claim must be disclosed or exemplified in a working example, *In re Angstadt*, 537 F.2d 498 (CCPA 1976), Applicants respectfully submit that the claims recite a scope of subject matter which a skilled artisan could clearly make and use according to the teaching in the specification.

In light of the present amendment and the above remarks, reconsideration and withdrawal of this rejection is respectfully requested.

CONCLUSION

For at least the above reasons, Applicants respectfully request withdrawal of the rejections and allowance of the claims. If any outstanding issues remain, the Examiner is invited to telephone the undersigned at the number given below.

Applicants reserve all rights to pursue the non-elected claims and subject matter in one or more divisional applications.

Accompanying this response is a one-month extension of time to and including August 28, 2009 to respond to the Office Action mailed April 28, 2009 with the required fee. No further fee is believed due. However, if any additional fee is due, the Director is hereby authorized to charge our Deposit Account No. 03-2775, under Order No. 13478-00001-US from which the undersigned is authorized to draw.

Respectfully submitted,

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